

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SENATE BILL 699

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Dede Feldman

AN ACT

RELATING TO UNFAIR TRADE PRACTICES; PROHIBITING CERTAIN
UNSOLICITED EMAIL OR FACSIMILE TRANSMITTED ADVERTISING
MATERIAL; PROVIDING A PRIVATE CAUSE OF ACTION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 57-12-1 NMSA 1978 (being Laws 1967,
Chapter 268, Section 1) is amended to read:

"57-12-1. SHORT TITLE. -- [~~This act~~] Chapter 57, Article 12
NMSA 1978 may be cited as the "Unfair Practices Act". "

Section 2. A new section of the Unfair Practices Act,
Section 57-12-23 NMSA 1978, is enacted to read:

"57-12-23. [NEW MATERIAL] UNSOLICITED FACSIMILES OR
EMAIL-- PROHIBITION. --

A. No person conducting business in this state
shall transmit by facsimile or cause to be transmitted by

underscored material = new
[bracketed material] = delete

underscored material = new
[bracketed material] = delete

1 facsimile unsolicited information advertising for the lease,
2 sale, rental, gift offer or other disposition of realty, goods,
3 services or the extension of credit unless:

4 (1) the person establishes a toll-free
5 telephone number that a recipient of the unsolicited
6 information may call to notify the person not to send the
7 recipient any additional unsolicited information; and

8 (2) the unsolicited information includes a
9 statement, in at least nine-point type, informing the recipient
10 of the toll-free telephone number that the recipient may call
11 to notify the sender not to send the recipient any additional
12 unsolicited information.

13 B. No person conducting business in this state
14 shall email or cause to be emailed unsolicited information
15 advertising for the lease, sale, rental, gift offer or other
16 disposition of realty, goods, services or the extension of
17 credit unless:

18 (1) the person establishes a toll-free
19 telephone number or a valid sender-operated return email
20 address that a recipient of the unsolicited information may
21 call or email to notify the person not to send the recipient
22 any additional unsolicited information;

23 (2) the unsolicited information includes a
24 statement, in the first text of the body of the message and in
25 the same size as the majority of the text of the message,

. 144597. 1

underscored material = new
[bracketed material] = delete

1 informing the recipient of the toll-free telephone number or
2 the email address that the recipient may call or email to
3 notify the sender not to send the recipient any additional
4 unsolicited information;

5 (3) the subject line of the email includes
6 "ADV:" as the first four characters; and

7 (4) if the information advertises realty,
8 goods, services or the extension of credit that may only be
9 viewed, purchased, rented, leased or held in the possession by
10 an individual eighteen years of age or older, the subject line
11 of the email includes "ADV:ADLT" as the first eight characters.

12 C. After notification by a recipient of the
13 recipient's request not to receive any further unsolicited
14 information, no person conducting business in this state shall
15 transmit by facsimile, cause to be transmitted by facsimile,
16 email or cause to be emailed any unsolicited information to
17 that recipient.

18 D. In the case of an employer who is the registered
19 owner of more than one email address, the notification required
20 by Subsection C of this section may be given on behalf of all
21 of the employees who may use email addresses provided and
22 controlled by the employer.

23 E. No person shall knowingly or intentionally
24 assist in the transmission of unsolicited information by
25 facsimile or email if the person knows, or consciously avoids

. 144597. 1

underscored material = new
[bracketed material] = delete

1 knowing, that the initiator of the information is engaged, or
2 intends to engage, in any act or practice that violates a
3 provision of the Unfair Practices Act.

4 F. A violation of a provision of this section
5 constitutes an unfair or deceptive trade practice.

6 G. As used in this section and Section 57-12-24
7 NMSA 1978:

8 (1) "transmit by facsimile", "cause to be
9 transmitted by facsimile", "email", "cause to be emailed" or
10 "assist in the transmission" does not include the transmission
11 of unsolicited information by a telecommunications utility or
12 an internet service provider that merely carries the
13 transmission over its network; and

14 (2) "unsolicited information" means
15 information transmitted by facsimile or email that:

16 (a) advertises the lease, sale, rental,
17 gift offer or other disposition of any realty, goods, services
18 or the extension of credit;

19 (b) is addressed to a recipient with
20 whom the sender does not have an existing business or personal
21 relationship; and

22 (c) is not sent at the request of, or
23 with the express consent of, the recipient. "

24 Section 3. A new section of the Unfair Practices Act,
25 Section 57-12-24 NMSA 1978, is enacted to read:

. 144597. 1

underscored material = new
[bracketed material] = delete

1 "57-12-24. [NEW MATERIAL] UNSOLICITED FACSIMILES OR
2 EMAIL--PRIVATE REMEDY.--

3 A. Any person who receives unsolicited information
4 by facsimile or email may bring an action against the sender of
5 the unsolicited information to recover actual damages,
6 including loss of profits, or statutory damages equal to the
7 greater of twenty-five dollars (\$25.00) for each email or
8 facsimile received or five thousand dollars (\$5,000) for each
9 day of violation, plus reasonable attorney fees and costs if,
10 prior to receiving the unsolicited information:

11 (1) the person who received the information
12 has notified the sender, pursuant to the provisions of Section
13 57-12-23 NMSA 1978, of the person's request not to receive
14 unsolicited information; or

15 (2) the sender of the information has entered
16 into a written assurance of discontinuance pursuant to Section
17 57-12-9 NMSA 1978.

18 B. A telecommunications utility or internet service
19 provider, injured by a violation of a provision of Section
20 57-12-23 NMSA 1978, may recover actual damages, including loss
21 of profits, or statutory damages equal to the greater of ten
22 dollars (\$10.00) for each facsimile or email transmitted or
23 five thousand dollars (\$5,000) for each day of violation.

24 C. The remedies provided in this section are in
25 addition to any available remedies otherwise provided by law."

. 144597. 1